

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
2006 MAR 13 PM 3 13

BARBARA FLANDERS,
Plaintiff,

v.

BARRY CALLEBAUT USA, LLC
Defendant.

Docket No.

CLERK
DEPUTY CLERK

1:06-cv-55

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), Defendant Barry Callebaut USA, LLC, hereby removes this action to the United States District Court for the District of Vermont on the following grounds:

1. On September 12, 2005, Plaintiff, Barbara Flanders (formerly known as Barbara Webb) commenced an action in Chittenden County Superior Court of the State of Vermont Docket Number S1031-2005CnC against Liftech Companies Inc., Barry Callebaut U.S.A., Inc., Gary Leroux, an individual, and Barry Callebaut USA, LLC, incorrectly designating Barry Callebaut U.S.A., Inc., as a party defendant to the action.

2. On September 30, 2005, before any defendants filed an answer, Plaintiff filed an amended complaint naming the same defendants. (True and accurate copies of all process, pleadings and orders are attached as required under 28 U.S.C. § 14461(a) as Exhibit "1").

3. On October 24, 2003, Barry Callebaut U.S.A., Inc., formerly a Vermont corporation, underwent a corporate merger and subsequent conversion into Barry Callebaut USA, LLC, a Delaware company, and therefore, Barry Callebaut, U.S.A., Inc. ceased to exist as a legal entity. On December 28, 2005, Defendant Barry Callebaut USA, LLC filed a Motion for Summary Judgment on behalf of its predecessor Barry Callebaut U.S.A., Inc. Plaintiff has not opposed the Motion for Summary Judgment. Instead, on January 27, 2006, Plaintiff filed a reply



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memorandum requesting to amend the complaint to drop Barry Callebaut U.S.A., Inc., as a party defendant. Defendant Barry Callebaut USA, LLC has stipulated to the amendment of the complaint to drop Barry Callebaut U.S.A., Inc., as a party defendant.

4. On January 5, 2006, Barry Callebaut USA, LLC filed a motion to sever Plaintiff's claims against it from Plaintiff's product liability and negligence claims against Defendants Liftech Companies, Inc., and Gary Leroux. On February 10, 2006, the Chittenden Superior Court granted the motion to sever, thereby making Plaintiff's employment based claims against Defendant Barry Callebaut USA, LLC a separate action. (A true and accurate copy of the Court's order is attached as Exhibit "2").

5. As a result of the Superior Court's severance order of February 10, 2006, the parties to the instant action are: Plaintiff, Barbara Flanders, a citizen and resident of the State of Vermont, and Defendant Barry Callebaut USA, LLC, Delaware limited liability company existing under the laws of the State of Delaware, with a principal place of business in a state other than the State of Vermont.

6. Accordingly, the United States District Court for the District of Vermont has original jurisdiction over this matter because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and the matter in controversy is between citizens of different states. See 28 U.S.C. §§ 1332(a)(1), 1332(c)(1), 1446(b).



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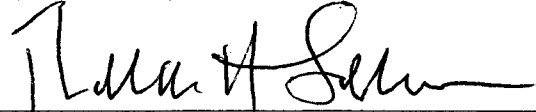
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WHEREFORE, this matter is hereby removed from the Chittenden County Superior Court for the State of Vermont to the United States District Court for the District of Vermont.

DATED AT Burlington, Vermont, this 13th day of March, 2006.

BARRY CALLEBAUT USA, LLC

By its attorneys:



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